

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 9418/2007 & CM 17740/2007

RAM LAKHAN SHARMA Petitioner
Through Mr. Santosh Kumar, Adv.,

versus

UOI & ORS Respondent
Through Mr. Rajat Gaur, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L.BHAYANA

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| 1. Whether reporters of local papers may be allowed to see the Order? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Order should be reported in the Digest? | Yes |

O R D E R
17.12.2007

We have perused the Orders of the Chief of Army Staff dated 7.9.2007, relevant paragraphs of which read thus:-

4. I have perused the Statutory Complaint and examined the same against his overall profile, comments of intermediary authorities, existing rules and regulations and other relevant documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it emerges that the plea for setting aside of discharge from service on grounds of 'Service no longer required being undesirable soldier', is not justified. The individual was a habitual offender and even after being provided

ample opportunity to improve himself, he did not show any improvement and continued to indulge in acts of indiscipline. His further retention in service would have been detrimental to organizational interest. Having earned six red ink entries, the individual was discharged from service under the provisions of Army Rule 13 (3) Item III (v) read in conjunction with Integrated HQ of Ministry of Defence (Army) letter No A/13210/159/AG/PS-2(c) dt 28 Dec 1988, wherein JCOs/OR having four or more red ink entries can be discharged from service on grounds of being undesirable/inefficient. No injustice has been done to him.

5. I, therefore, direct that the complaint be rejected.

The contention raised by learned counsel for the Petitioner is that a Court Martial must necessarily precede action under Rule 13(3)(iii)(v) of the Army Rules, 1954. Reliance is placed on Rules 180 and 22 of the Army Rules, 1950. In our view that would apply where the decision is predicated only on a charge which is the reason for the discharge. In the present case there are already six red ink entries and three black ink entries. A Show Cause Notice was issued in March 2004 to the petitioner itemising all these punishments. In response thereto the Petitioner had submitted a Representation dated April, 2004 in which he had only pleaded that the threatened action would

lead to financial ruin of his family. Therefore, there is no room to contend that the administrative decision to discharge the Petitioner was perverse, unreasonable or not supported by sufficient material.

To contend that action under Rule 13(3)(iii)(v), which is essentially an administrative action, should also be in consonance with Rules 180 and 22 would render this provision totally nugatory. Rules 180 and 22 relate to Courts-Martial. Keeping the dismal record of the Petitioner in mind we find no reason to exercise the extraordinary powers vested in us by virtue of Article 226 of the Constitution of India.

Dismissed.

VIKRAMAJIT SEN,J

S.L.BHAYANA, J

DECEMBER 17, 2007
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